

**DOMINGO BAUTISTA, PETITIONER, VS. THE COURT OF APPEALS,
PHILIP-PINE READY-MIXED CONCRETE CO., INC., AND CENTRAL
SURETY & INSURANCE CO., RESPONDENTS.***G.R. No. L-22710. June 30, 1967*

Ponente: SANCHEZ, J.

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In 1951 and 1952, Philippine Ready-Mixed Concrete Co., Inc. [hereinafter called Prmcci] had various road-building contracts with the Government of the Republic of the Philippines to be performed on Plaza Lawton [PR-521], Juan Luna and Plaza Moriones [PR-13(1)], España Extension [PR-65(3)], and Highway 54 [PR-10(9)].

Pursuant to Act 3688, "An Act for the protection of persons furnishing materials and labor for the construction of public works", Prmcci jointly and severally executed with Central Surety & Insurance Co. [hereinafter referred to as Central] a performance bond for P313,407.00, to secure the performance of the contract, and the payment of labor and materials used in the construction of Highway 54. The other projects were each covered by similar bonds.

Petitioner Domingo Bautista was the supplier of sand and gravel and filling materials. To further assure payment to petitioner of the construction materials for España Extension and Highway 54, and the batching plant at Port Area, Manila, respondents Prmcci and Central executed in favor of petitioner, another surety bond for P20,000.00.

Work commenced on these projects. From time to time, petitioner delivered to Prmcci the needed construction materials.

On January 31, 1952, petitioner lodged with the Court of First Instance of Rizal, a complaint against Prmcci [Civil Case No. 1636, entitled "Domingo Bautista, plaintiff vs. Philip-pine Ready-Mixed Concrete Co., Inc., and Central Surety & Insurance Co., defendants"], for the recovery of P102,880.24, the unpaid balance of the price of sand and gravel "furnished and delivered to the latter from September, 1951 to January, 26, 1952, which it used in its contracts with the Government and for its batching plant". Central was included in that complaint as defendant by reason of the P20,000.00-bond heretofore adverted to.

On February 14, 1952, plaintiff [petitioner herein, Domingo Bautista] defendant contractor Prmcci [principal respondent herein] entered into a judicial compromise agreement in said Civil Case 1636, as follows:

"1. That the defendant Philippine Ready-Mixed Concrete Company, Inc. acknowledges by virtue of these presents that it owes the plaintiff the sum of P104,000.00 for all materials already supplied and delivered to and used by the said corporation;

2. That for the payment on account of the said amount of P104,000.00, the defendant corporation hereby irrevocably authorizes the plaintiff to obtain in his own name from and by these presents empowers the Bureau of Public Works to issue in the name of the plaintiff a check amounting to P14,000.00 more or less on or before February 15, 1952 from any amount which will be collected by the said corporation in connection with its

contract PR-521 [Plaza Lawton] and another check for P67,000.00 in his name to be obtained from the said Bureau of Public Works on or before February 21, 1952 in connection with contract PR-13(1), contract No. 1, comprising Plaza Moriones and Juan Luna, thus making a total of approximately P81,000.00;

3. That the balance of P23,000.00 has already been assigned by the defendant corporation to the plaintiff by virtue of the agreement had between the parties in civil case No. 1482 of the Court of First Instance of Rizal;

4. That the price of all the supplies and materials which will be delivered and supplied by the plaintiff to the defendant corporation subsequent to this agreement shall be deducted from all weekly collections which will be paid by the Bureau of Public Works to the said corporation in connection with any contract or contracts which it has or might have with the Philippine Ready-Mixed Concrete Company, Inc., it being expressly understood in this connection that any assignment heretofore made and which may be made hereinafter by the defendant corporation in favor of any person or persons, firm or corporation should not be honored, respected and paid by the Bureau of Public Works, Provided, furthermore, that for the failure of the plaintiff to obtain the said weekly payments, he is hereby authorized and empowered to stop the supply and delivery of materials which may be needed by the said defendant corporation."

On February 15, 1952, pursuant to the prayer in the foregoing compromise agreement, the Court of First Instance rendered judgment "in accordance with the said agreement" without pronouncement as to costs.

Came April 2, 1952. On this date, petitioner Domingo Bautista instituted against respondent Prmcci another civil action [Civil Case No. 1711, CFI, Rizal] to recover P37,686.80 representing the unpaid balance of the sand and gravel "furnished and delivered to the latter during the months of February and March, 1952, which it used in its contracts with the Government of the Republic of the Philippines, and for its batching plant". According to the judgment of the Court of Appeals, that case was then still pending before the court a quo.

Then, on July 31, 1952 the Director of Public Works wrote petitioner Domingo Bautista, stating that the work on Highway 54 [contract PR-10(9)], was completed on June 8, 1952 and that "after final liquidation x x x there will be no further payment to be made by this Bureau to the contractor"; and that petitioner could then "proceed to take necessary action" for the recovery of his claim for materials supplied the contractor upon the performance bond of P313,407.00 furnished by Central.

On October 3, 1952, Bautista filed the case now before us [Civil Case No. 1888, Court of First Instance of Rizal] against Prmcci and Central to enforce against the performance bond the payment of an alleged balance of the price of sand and gravel furnished and delivered to and used by Prmcci for the construction of the Highway 54 project, in the total sum of P48,807.74. Of this amount, the sum of P8,012.59 represents the value of construction materials from February 14, 1952 to March 31, 1952. The remainder, i.e., P40,795.15, was for the sand and gravel delivered to Highway 54 up to January 26, 1952 which was "included in the complaint in Civil Case No. 1636".

On January 23, 1953, in this last Case 1888, pursuant to Act 3688, the Rizal court issued notice by publication, to inform all unpaid suppliers of labor and materials about the pendency of the instant case. They were advised "to file their claims" therein.

On May 22, 1953, Allied Enterprises Co., Inc. moved to intervene. The complaint in intervention avers that intervenor furnished crushed rock used in Highway 54, and prays that, upon the provisions of Act 3688, Prmcci and Central be adjudged, jointly and severally, to pay intervenor the balance of the value thereof in the sum of P13,629.42, with damages.

On November 24, 1953, the Court admitted the complaint in intervention.

Upon the issues raised by the pleadings, and after trial, judgment was, on January 3, 1956, rendered in Case 1888, as follows:

"WHEREFORE, judgment is rendered in favor of the plaintiff Domingo Bautista and intervenor Allied Enterprises Co., Inc. and against defendants, ordering defendants Philippine Ready-Mixed Concrete Co., Inc. and Central Surety & Insurance Co., Inc. jointly and severally to pay plaintiff Domingo Bautista the sum of P48,807.74 with interest at 6% per annum from October 3, 1952 when the complaint was filed, and to pay the costs; and ordering the same defendants jointly and severally to pay intervenor Allied Enterprises Co., Inc. the sum of P13,629.42, with interest at 6% per annum from May 26, 1953, when the complaint in intervention was filed, and to pay the costs."

Prmcci and Central separately moved to reconsider.

On February 24, 1956, the trial court rendered an amended judgment, viz:

"WHEREFORE, the dispositive portion of the judgment dated January 3, 1956 is hereby amended to read as follows:

"Wherefore, judgment is rendered in favor of the plaintiff Domingo Bautista and intervenor Allied Enterprises Co., Inc. and against defendants, ordering defendants Philippine Ready-Mixed Concrete Co., Inc. and Central Surety & Insurance Co., Inc. jointly and severally to pay plaintiff Domingo Bautista the sum of P48,807.74, with interest at 6% per annum from October 3, 1952, when the complaint was filed, and to pay the costs; and ordering the same defendants jointly and severally to pay intervenor Allied Enterprises Co., Inc. the sum of P13,629.42 with interest at 6% per annum from May 26, 1953, when the complaint in intervention was filed, and to pay the costs.

The Philippine Ready-Mixed Concrete Co., Inc., is ordered to reimburse the Central Surety & Insurance Co., Inc., any sum or sums of money the latter would pay under the judgment to plaintiff and to intervenor."

Central and Prmcci appealed to the Court of Appeals.

In a decision promulgated on November 18, 1963, the court of Appeals modified the judgment of the trial court as follows:

"WHEREFORE, with the modification that defendants-appellants are jointly and severally ordered to pay plaintiff-appellee Domingo Bautista only the sum of P8,012.59, the judgment appealed from is hereby affirmed in all other respects."[1]

The case is now before us on appeal by petitioner Domingo Bautista. Briefs were filed by petitioner and respondent Central. Prmcci did not submit a brief.

The correctness of the decision of the Court of Appeals directing respondents to pay, jointly and severally, to petitioner the sum of P8,012.59 is not open to inquiry. Because said respondents did not appeal from the judgment of the appellate court. Solely disputed here is the amount of P40,795.15, balance of the value of the sand and gravel delivered to Highway 54 during the period from September 1951 to January 26, 1952.

With respect to the sum of P40,795.15, is the final judgment by compromise in Civil Case 1636 [CFI, Rizal] a bar to the present action [Civil Case 1888 of the same court)?

1. Here is the situation presented by the final judgment in the first case, Civil Case 1636. Respondent Prmcci's different obligations to petitioner under the various public work projects were consolidated into one single amount of P104,000.00. Payment of this obligation, also by virtue of said judgment, would be taken from the following:

- (a) By PEW check in petitioner's name which was to be issued on or before February 15, 1952, from any amount to be collected under contract PR-521 [Plaza Lawton] P14,000.00
- (b) Another check to be obtained on or before February 21, 1952 in connection with contract PR-13(1) [Plaza Moriones and Juan Luna) . . . P67,000.00
- (c) Amount already assigned by Prmcci to petitioner by virtue of the agreement had by the parties in Civil Case No. 1482, CFI, Rizal P23,000.00
- Total P104,000.00

That payment of the amounts just listed, totalling P104, 000.00 had been made, is beyond debate. Therefore, upon the terms of the compromise agreement of February 14, 1952, reduced to judgment on February 15, 1952 in Civil Case 1636, that judgment for P104,000.00 had been fully satisfied.

Not that petitioner Bautista did not consider himself bound by the agreement and judgment in Civil Case 1636. Proof: when he subsequently filed on April 2, 1952 another suit, Civil Case 1711, CFI, Rizal, against the same respondent Prmcci, he only prayed for P37,686.80, the unpaid balance on the sand and gravel used in Prmcci's contracts, during the months of February and March, 1952. In Case 1711, he did not lay claim to any amount due him - upon the Highway 54 account - prior to the judgment in Case 1636.

But, thereafter, came the letter of the Director of Public Works of July 31, 1952 addressed to petitioner. The suggestion therein that petitioner sue Prmcci on the latter's P313,407.00-bond, naturally opened petitioner's eyes. He registered the present suit, Case 1888, CFI-Rizal. This time, he sought to recover not only for deliveries made subsequent to the judgment in Case 1636. He also prayed for judgment for an alleged amount still unpaid on the deliveries of materials for Highway 54 prior to February 4, 1952, for which judgment was already rendered in Case 1636. To our mind, Case 1888, this case, is but an eleventh-hour effort to shy away from the import of the agreement and judgment in Case 1636. For now, attempt is made by petitioner to apply the collections (enumerated in, and to be applied by the terms of, the judgment in Case 1636, to the obligation of P104,000.00), first, "to the accounts of the particular projects from which the money came and the sur-plus of such collections from the other projects to the account of Highway 54". Aptly did the Court of Appeals state:

"Such application of payments would be proper if it is not clearly deduced from the compromise agreement that the total payment of P104,000.00 by the Bureau of Public Works consisting of P14,000.00, more or less; to be covered by a check to be issued on or before February 15, 1952, from any amount collectible under contract PR-521 [Plaza Lawton] and P67,000.00 to be obtained from said Bureau through another check to be issued on or before February 21, 1952, collectible under contract PR-13(1) comprising Plaza Moriones and Juan Luna, or a total of approximately P18,000.00, plus the balance of P23,000.00 assigned by defendant corporation to plaintiff by virtue of the agreement had between the parties in Civil Case No. 1482 of the Court of First Instance of Rizal, covered all the indebtedness of the Philippine Ready-Mixed Concrete Co., Inc. for construction materials already supplied and delivered to and used by said corporation during the period from September 12, 1951 to January 31, 1952. Evidently the cost of these construction materials were all paid for by applying said sum of P104,000.00 to the balance of all accounts due unpaid on February 14, 1952, the date of the compromise agreement. Consequently, any application of payment made at variance with the intent behind the agreement in the judicial compromise cannot be sanctioned.

Furthermore, it appears from plaintiff's evidence that a part of the account for Highway 54 had been paid from the surplus funds from other projects (Exhibits D and D-5). These surplus funds include treasury warrants from the Bureau of Public Works dated March 18, 1952, and March 24, 1952 (Exhibits D-7 and D-8). If the collection on these dates were already considered as 'surplus funds from other projects' and, therefore, the account for these other projects had already been fully settled, we see no reason why plaintiff instituted Civil

Case No. 1711 on April 2, 1952, allegedly to collect the payment of the unpaid deliveries for all projects during the months of February and March, 1952. Again, why did plain-tiff's witness, Jaime Bautista, testify during the trial of the instant case, while Civil Case No. 1711 was still pending, that the accounts for all projects except that for Highway 54 had already been settled, although it appears that the last check paid for these projects was dated March 24, 1952? The only logical and reasonable explanation that can be drawn from these apparently irreconcilable facts is that, in accordance with the terms of the judicial compromise, plaintiff did apply the collections from the Bureau of Public Works to the accounts for the deliveries made to all the projects during the period from September 12, 1951, to January 26, 1952, and thereafter instituted Civil Case No. 1711 for the payment of the deliveries to all projects made during the months of February and March 1952. After the filing of said case, plaintiff received the letter from the Bureau of Public Works informing him that he could proceed against the performance bond for all unpaid claims for Highway 54. In order to take advantage of the security of the bond, plaintiff changed the application of payments by settling first all the accounts for the other projects from the collections received from the Bureau of Public Works including those already applied in accordance with the terms of the judicial compromise in Civil Case No. 1636, so as to leave only the account for Highway 54 as still unpaid. Plaintiff, however, cannot, by the simple expedient of changing the application of payments, revive an obligation that had been legally extinguished by payment."

2. Petitioner seeks protection in the P313,407.00-performance bond given under Act 3688. But, as far as his claim to any amount due before the judgment in Case 1636, petitioner lost his recourse thereto. He cannot now undo what was effectively concluded by the judgment in Civil Case 1636. By that judgment, the identity of each separate account of Prmcci as of February 14, 1952, had been entirely extinguished. Only one account that very date existed, and it was fixed at P104,000.00. And there was no breakdown to indicate how much of that amount pertains to one project or the other. The parties consolidated the accounts into one single obligation of P104,000.00. Included in that obligation is the present claim for P40,795.15; and this has been paid by reason of the judgment. To allow petitioner to clamp liability for that amount upon the performance bond of P313,407.00, is to allow him to go back to the situation before the final judgment on the compromise agreement was entered. This cannot be done. *Non quieta movere*.

3. We look at this case from the viewpoint of Central. Upon the performance bond of P313,407.00, Central's and Prmcci's liability is joint and several. Covered by that bond is the amount P40,795.15. This last sum has been paid by one of the solidary debtors, Prmcci. This payment wipes out the obligation. Perforce, Central's liability upon the performance bond, to that extent, must also be considered extinguished.[2]

For the reasons given, the judgment of the Court of Appeals under review is hereby affirmed. Costs on appeal to this Court against petitioner.

So ordered.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar and Ruiz Castro, JJ., concur.

[1] CA-G. R. No. 26910-R, "Domingo Bautista, plaintiff-appellee, vs. Philippine Ready- Mixed Concrete Co., Inc. and Central Insurance Company, Inc., defendants-appellants; "

[2] Art. 1217, Civil Code: "Payment made by one of the solidary debtors extinguishes the obligation. x x x." Wilson vs. Berkenkotter, 92 Phil, 918, 923; Camus vs. Court of Appeals, 107 Phil., 4.

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